

EXHIBIT D

CARLTON CLARKE June 13, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

-----X

COPART,

Plaintiff,

Case No:

- against -

C072684 CW

CRUM & FORSTER INDEMNITY COMPANY, UNITED
STATES FIRE INSURANCE COMPANY, and DOES 1-10,

Defendants.

-----X

AND RELATED COUNTERCLAIMS

-----X

Merrill Legal Solutions
25 West 45th Street
New York, New York 10036

June 13, 2008
10:30 a.m.

- Volume I -

DEPOSITION OF CARLTON CLARKE, pursuant to Notice,
taken at the above place, date and time, before Dawn
Matera, a Registered Professional Reporter and Notary
Public within and for the State of New York.

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1 Carlton Clarke

12:35:45 2 subject to a Statement of Values on file with the

12:35:47 3 company.

12:35:48 4 Q. In your time with Crum & Forster, do

12:35:50 5 you ever recall reading a policy provision in a Crum

12:35:54 6 & Forster policy that stated if the value is missing

12:35:58 7 from the Schedule of Values, there would be no

12:36:00 8 coverage?

12:36:00 9 A. No.

12:36:01 10 Q. When Copart's Hurricane Wilma claims

12:36:09 11 first came in, were you already handling Copart's

12:36:14 12 Hurricane Katrina claims?

12:36:16 13 A. Yes.

12:36:17 14 Q. Do you recall who at Copart you talked

12:36:18 15 to when Copart's Katrina claims had come in?

12:36:22 16 A. Off the top of my head, no, I would

12:36:25 17 have to refer to the claim file.

12:36:27 18 Q. But one of the first things you would

12:36:29 19 have done upon receiving the Katrina claims, based on

12:36:32 20 your pattern of practice, would be to call someone at

12:36:35 21 Copart or make contact with the insured?

12:36:36 22 A. Correct.

12:36:37 23 Q. And when the Copart Hurricane Wilma

12:36:41 24 claims come in, came in, rather -- I will represent

12:36:46 25 to you it was around the end of October 2005 -- do

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2 you recall making contact with the Copart insured?

3 A. I recall eventually getting in contact

4 with the Copart insured.

5 Q. Why do you say "eventually"?

6 Do you remember it didn't happen too

7 quickly?

8 A. Again, off the top of my head, I think

9 there was some delay, there was some delay or some

10 issue with making contact. And I think there was a,

11 there was a delay in making contact. Some thing like

12 that.

13 Q. Do you recall hiring an independent

14 adjuster to assist you in adjusting the Copart Wilma

15 claim?

16 A. Yes.

17 Q. Who do you recall hiring?

18 A. This was Orvin Wills of General

19 Adjustment Bureau, GAB.

20 Q. GAB, thank you. I didn't know what

21 that acronym stood for.

22 Did you have a prior relationship with

23 Mr. Wills that you selected him?

24 A. I've known Orvin in a professional

25 capacity for several years.

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13:03:39 2 Copart claim?

13:03:40 3 A. No.

13:03:41 4 Q. Did you rely on your analysis of the

13:03:43 5 '05/'06 policy in denying the Copart claim?

13:03:47 6 A. I relied on the underwriter's

13:03:49 7 assertion that that location was not a covered

13:03:51 8 location.

13:03:51 9 Q. And that was all?

13:03:52 10 A. That was all.

13:04:01 11 Q. We'll come back to the windstorm

13:04:03 12 deductible issue in a moment.

13:04:05 13 Were there other occasions in your

13:04:30 14 time working for Crum & Forster where you asked an

13:04:34 15 underwriter for a coverage opinion?

13:04:36 16 MS. MILLIKAN: Objection. Misstates

13:04:38 17 the testimony, but you can answer the

13:04:40 18 question.

13:04:40 19 A. I asked an underwriter, not for a

13:04:46 20 coverage opinion, I asked the underwriter to explain

13:04:49 21 their intent with regards to the policy that they

13:04:52 22 wrote.

13:04:52 23 Q. And if an underwriter, say, offered a

13:04:55 24 coverage opinion, this location is or is not covered,

13:04:58 25 you would endeavor to independently verify that;

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14:56:16 2 exclusion that I cited.

14:56:16 3 In this instance, there is no exact
14:56:19 4 wording in the policy that comports with the reason
14:56:21 5 for denial or the exclusion, so I did not cite it.

14:56:24 6 Q. But your understanding is there is
14:56:26 7 general language in the policy that supports the
14:56:28 8 basis for this denial; right?

14:56:30 9 A. Yes.

14:56:30 10 Q. And you didn't think it was necessary
14:56:32 11 to cite that, even that general language?

14:56:34 12 A. No, because I think my statement
14:56:38 13 speaks for itself.

14:56:38 14 Q. How would an insured know the basis on
14:56:41 15 which you were denying the claim, except for the fact
14:56:45 16 that it wasn't in the Statement of Values?

14:56:47 17 MS. MILLIKAN: Objection. Calls for
14:56:48 18 speculation, but you can answer the question.

14:56:55 19 A. I think the statement is very clear.
14:56:56 20 Where it says "Our review of the Statement of Values
14:56:59 21 attached to your policy indicates that there is no
14:57:01 22 coverage for buildings or time element exposures at
14:57:06 23 this location. "

14:57:07 24 Q. And as far as you knew, this was the
14:57:09 25 first time that you were communicating to the insured

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14:57:11 2 that they didn't have coverage for 105 because it

14:57:14 3 wasn't in the SOV; right?

14:57:16 4 A. Yes.

14:57:17 5 Q. And did you seek and receive approval

14:57:20 6 to send this letter before you did so?

14:57:22 7 A. Absolutely.

14:57:22 8 Q. And you sought that from Mr. McCarthy?

14:57:26 9 A. Yes.

14:57:26 10 Q. Did you seek that from anyone else on

14:57:28 11 the Crum & Forster team, as far as you recall?

14:57:31 12 A. I think Jim Krause may have taken a

14:57:33 13 look at the letter, but it was not in terms of

14:57:36 14 approval, but simply for content.

14:57:38 15 Q. And do you recall Mr. McCarthy and

14:57:39 16 Mr. Krause having any comments on that letter?

14:57:41 17 MS. MILLIKAN: Do not respond with

14:57:43 18 respect to any comments that Mr. Krause may

14:57:45 19 have had because that would be

14:57:46 20 attorney/client privilege.

14:57:48 21 You can answer to anything that

14:57:49 22 Mr. McCarthy might have told you.

14:57:51 23 A. Dennis McCarthy approved the letter.

14:57:53 24 Q. Do you remember anything else

14:57:55 25 substantive aside from him saying go ahead with the